

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHIRLEY D. MILLER and U. S. POSTAL SERVICE,
POST OFFICE, Carol Stream, Ill.

*Docket No. 96-2154; Submitted on the Record;
Issued July 6, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained a recurrence of disability causally related to her January 13, 1995 employment injury.

On February 17, 1995 appellant then a 35-year-old flat sorting machine operator, filed a claim for compensation (Form CA-2) alleging that on January 13, 1995 she first became aware that her left wrist pain and discomfort were caused by a ganglion cyst, and that she became aware that her condition was caused or aggravated by her employment on January 16, 1995.

In a July 13, 1995 medical report, Dr. Scott A. Levin, appellant's treating physician who specializes in Family Practice, restricted appellant to no more than four hours a day as a flat sorting machine keypunch operator.

On September 14, 1995 the Office of Workers' Compensation Programs accepted appellant's claim for a ganglion cyst, left wrist.

On August 30, 1995 appellant filed a notice of recurrence of disability alleging that she had pain and loss of feeling in her left arm which rendered normal living habits and work requirements more difficult to fulfill. Appellant listed June 13, 1995 as the date of recurrence, noting that she returned to work on June 21, 1995.¹

In a medical report dated October 26, 1995, Dr. Thomas Bielanski, a colleague of Dr. Scott's and Board-certified in Family Practice, stated that appellant was unable to work from October 25 through October 27, 1995 due to her ganglion cyst.

¹ Appellant's sick leave record indicates that she was paid for time lost, June 13 through 17, 1995, a total of 40 hours, under the authority of the Office.

On November 3, 1995 appellant filed a claim for recurrence of disability stating that she was out of work from October 23 through October 29, 1995 due to pain caused by her work-related injury. She noted that “the hand is still hurting,” that she was “losing the feeling in my hand,” and that “the bump is still there.” In the supervisor’s section of the form it was noted that the employing establishment accommodated appellant’s condition by restricting her flat sorting machine keypunch work to four hours a day while providing her an additional four hours utility work.

On November 22, 1995 the Office requested that Dr. Levin provide an in-depth medical report on appellant’s ganglion cyst including a “reasoned opinion regarding the relationship of the findings to the federal employment work injury.”

On December 22, 1995 the Office informed appellant that it had received her claim for recurrence of disability, and advised her that the fact that the Office had previously accepted a work-related injury involving the same part of the body “does not mean that any subsequent problem with the same part of your body are related to your injury.” The Office advised her that a recurrence of disability is “a spontaneous return or increase of disability due to the previous injury ... without an intervening cause.” The Office explained to appellant that she had 30 days from the date of the notice to provide evidence that established the relationship between her current condition to her work-related injury. The Office also explained that if, however, she had a new injury, she was advised to file a new notice of injury.

In an attendance report received by the Office on January 31, 1996 it was noted that appellant was credited with annual leave from October 25 through October 28, 1995.

In a decision dated March 1, 1996, the Office denied appellant’s claim for recurrence of disability noting that the evidence of file failed to establish that appellant had a recurrence of disability after October 16, 1995 causally related to her January 13, 1995 work-related injury.²

The Board finds that appellant has not established that she sustained a recurrence of disability after October 16, 1995 causally related to her January 13, 1995 employment injury.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her recurrence of disability and her January 13, 1995 employment injury.³ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁴

² The Board notes that appellant submitted additional evidence subsequent to the Office’s March 1, 1996 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

³ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

⁴ *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

In the present case, the Office accepted that appellant sustained a ganglion cyst, left wrist, in the performance of duty on January 13, 1995. Following the injury, appellant returned to work with a restriction to work no more than four hours a day as a flat sorting machine operator. The employing establishment's attendance records show that appellant received compensation benefits from June 13 through June 17, 1995 for which she had filed a claim for recurrence of disability on August 30, 1995. However appellant filed a second recurrence of disability on November 3, 1995 for time lost between October 16 and October 30, 1995. The Office thereupon advised appellant that her claim was deficient inasmuch as she submitted no medical evidence to support a causal relationship between her claim and the work-related injury, and advised her regarding the kind of medical evidence that she was required to submit to establish her entitlement to a recurrence of her January 13, 1995 injury. The Office also advised appellant to consider whether she had sustained a new injury, and, if so, what information she would need to submit to support a new claim.

Appellant failed to submit any medical evidence after her November 3, 1995 claim submission or after the Office's December 22, 1995 notice to her. The Office therefore decided the claim on the evidence contained in the file and properly denied the claim. Consequently, appellant has not submitted rationalized medical opinion evidence sufficient to establish that she sustained a recurrence of disability on or after October 16, 1995 causally related to her January 13, 1995 employment injury.

The decision of the Office of Workers' Compensation Programs dated March 1, 1996 is hereby affirmed.

Dated, Washington, D.C.
July 6, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member